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Supreme Court, U. S.
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in the

Supreme Court

of the

United States

OCTOBER TERM, 1972

NO. 72-1432

FERNANDO ACOSTA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
to
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

LAWRENCE E. HOFFMAN
Attorney for Petitioner
Suite 12-D, 407 Lincoln Road
Miami Beach, Florida

HOFFMAN & ST. JEAN
Of Counsel

MIAMI REVIEW — 371-4853 — 377-3721

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OPINIONS OF THE COURT BELOW

The first Opinion and Judgment of the United States Court of Appeals for the Fifth Circuit dated June 29,

1972 is reported in 462 F.2d 740. A copy is attached as Appendix "A".

The second Opinion and Judgment of the United States Court of Appeals for the Fifth Circuit was entered on February 12, 1973 and is unreported. A copy is attached as Appendix "B".

An Order of the same Court denying a Petition for Rehearing and a Petition for Rehearing En Banc was entered on March 26, 1973. A Copy is attached as Appendix "C".

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of 28 U.S.C., §1254(1).

QUESTIONS PRESENTED

I.

IN A PROSECUTION CHARGING A CONSPIRACY TO IMPORT AND SELL NARCOTICS, IS THE ACCUSED DENIED A FAIR AND IMPARTIAL TRIAL WHEN TWO BOOKS DEALING WITH NARCOTIC ADDICTION AND WITH LARGE-SCALE DRUG BUSINESS CARRIED ON BY CRIMINAL SYNDICATES AND AT LEAST ONE PAMPHLET DESCRIBING NARCOTICS ARE PRESENT IN THE JURY ROOM DURING THE TRIAL?

II.

WHERE AN ACCUSED IS CHARGED IN ONE COUNT WITH A NARCOTICS CONSPIRACY AND IN A SECOND COUNT WITH THE SUBSTANTIVE ACT OF FACILITATING THE TRANSPORTATION OF SIX POUNDS OF COCAINE, IS THE ACCUSED DENIED A FAIR AND IMPARTIAL TRIAL ON THE CONSPIRACY COUNT WHEN THE SIX POUNDS OF COCAINE ARE ADMITTED INTO EVIDENCE IN SUPPORT OF THE SUBSTANTIVE COUNT, AND THE CONVICTION ON THE SUBSTANTIVE COUNT IS THEREAFTER REVERSED?

III.

WHEN GOVERNMENT WITNESSES, WHO ARE ALLEGED CO-CONSPIRATORS, GIVE CONFLICTING AND CONTRADICTORY TESTIMONY ON DIRECT EXAMINATION, IS IT PREJUDICIAL ERROR TO DENY THE ACCUSED'S REQUEST TO EXAMINE THE GRAND JURY TESTIMONY OF SUCH WITNESSES FOR THE PURPOSES OF IMPEACHMENT ON CROSS EXAMINATION, PARTICULARLY WHEN SOME OF THE WITNESSES UTILIZED THEIR GRAND JURY TESTIMONY IN ADVANCE OF TRIAL TO REFRESH THEIR RECOLLECTIONS?

FEDERAL STATUTES INVOLVED

The Federal Statute involved in this Petition is as follows:

Title 21, United States Code, Section 174 (repealed October 27, 1970):

> "Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or conspires to commit any of such acts in violation of the laws of the United States, shall be imprisoned not less than five or more than twenty years and, in addition, may be fined not more than $20,000. For a second or subsequent offense (as determined under section 7237(c) of the Internal Revenue Code of 1954), the offender shall be imprisoned not less than ten or more than forty years and, in addition, may be fined not more than $20,000.
>
> Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury."

STATEMENT OF THE CASE

On October 14, 1969, Petitioner Acosta, together with twelve additional Defendants were indicted in Count I for a conspiracy to import narcotic drugs into the United States and to receive, buy, sell and facilitate their transportation to various parts of the United States after such importation.

Count II charged Petitioner and six additional Defendants with the substantive act of receiving and facilitating the transportation of 6 pounds, 10 ounces of cocaine on September 27, 1968.

Of the thirty-eight overt acts alleged in the Indictment, Petitioner was named in eight. The Trial Court charged out seven of those eight for lack of proof and no proof whatsoever was adduced as to the said eighth overt act.

The Government's first witness was Marcos Hernandez-Huertas, a convicted felon, bail jumper and narcotics user, who characterized himself as the biggest narcotics dealer in San Juan. He contradicted himself on dates and did not know how long he had been in prison. He said he met Petitioner in Puerto Rico toward the end of 1964, or the beginning of 1965 or during the summer of 1964. The Indictment alleges that the conspiracy began during the summer of 1965.

At the conclusion of his direct testimony, Petitioner moved the Court to have the witness' grand jury testimony produced upon the ground that a particularized need had been shown to use those minutes on cross examination for impeachment. The Court denied the motions.

The next material witness was Frank Cocossa, an alleged co-conspirator, bond jumper, heroin and cocaine addict, dealer in narcotics, and felon, who admitted he was guessing on the dates that he allegedly recruited girls to smuggle cocaine into the United States. A Motion by defense counsel to examine his grand jury testimony was denied. This witness did not mention the name of Petitioner but at this point the Judge stated in the presence of the jury. ". . . we had a conspiracy and we want to get all of these things in or out." A motion for mistrial was denied.

During the next five days, the Government adduced testimony concerning the smuggling of cocaine into the United States from a series of witnesses, all young ladies who were living with men without benefit of marriage and who were narcotic addicts, users and dealers. At least one of them admitted having committed perjury during the trial, but motions to inspect their grand jury testimony was denied, and the Court, in the presence of the jury, referred to one of the co-defendants on trial as a co-conspirator".

None of the foregoing so-called "courier" witnesses mentioned the name of Petitioner or indicated that they knew him or had ever heard of him, but described having been recruited and paid by other persons to smuggle cocaine into the United States from Managua.

The second witness in the three week trial who mentioned the name of Petitioner was Oscar Estrada, a prison inmate and a narcotics dealer against whom additional felony charges were pending. He testified that he saw Petitioner on only one occasion during the witness' allegedly

large scale and almost daily narcotic dealings, and that single instance was when the Petitioner was present and allegedly participated in negotiations for the sale of cocaine. The remainder of his testimony, insofar as it related to Petitioner, consisted of hearsay statements from alleged co-conspirators made out of the presence of this defendant, and who were not present at the trial and who did not testify. Although this witness had read his grand jury testimony the previous day in order to refresh his memory, a motion to produce that testimony for use on cross examination was denied.

Luis Gomez, an alleged co-conspirator and felon, sentenced to life imprisonment for the rape and robbery of a co-defendant on trial, and who used narcotics, limited his testimony concerning Petitioner to the single statement that a co-defendant "mentioned the name of Fernando Acosta". Because of material differences between his trial testimony and his Jencks material, a request was made and denied to examine the grand jury minutes of his testimony.

Customs Agent Romano told the Court and jury that on September 27, 1968, six bags of cocaine were seized from one Denise Betancourt (substantive Count II of the Indictment) at the United States Customs Station in Miami, Florida, after she alighted from a Lanica Airline flight. These six large bags of cocaine were received into evidence as Government's Exhibit 30 over objection and subject to connection through the testimony of Miss Betancourt. Later, Miss Betancourt refused to testify upon the ground that her answers might tend to incriminate her. There was no testimony or evidence relating to any other

activities of Miss Betancourt except for this isolated incident, and this exhibit is the solitary physical evidence of cocaine submitted to the jury.

The Government rested its case and a motion for judgment of acquittal by Petitioner, and for a mistrial because of the introduction of exhibits of cocaine without connection, and to strike all hearsay testimony, and to strike from the Indictment all eight overt acts naming Petitioner, were denied.

During the first week of trial, the trial judge instructed the jury, including one alternate juror, that when they are in the jury room and wish to discuss the testimony which they have just heard among themselves, it would be alright. Upon objection, the Court later changed the instructions and again admonished the jury not to discuss the case among themselves until all the evidence is in.

During the course of the trial and prior to the final deliberation by the jury, a conference between the Court and counsel was held in the jury room. It was discovered that two books were on the table in the jury room, one called "Merchants of Misery" by J.A. Buckwater, and the other called "Up Tight" by John Gimenez, which specifically deal with the narcotics problem. The books had been checked out of a library in Fort Lauderdale, Florida. A Motion for a Mistrial was denied.

The books were discovered on the seventeenth trial day, the last day of taking testimony before final argument, when the trial judge and attorneys went into the jury room for the court to hear a legal argument out of

the hearing of the jury. All defendants called the books to the attention of the court and moved for a mistrial, which was denied. The books were left in the jury room. A motion was made that they be obtained and the prefaces read into the record. The trial judge declined on the ground that to take the books away from the jury would only call attention to the problem. No inquiry was made of jurors to ascertain the extent, if any, that the books had been seen by members of the jury and discussed. Since no inquiry was ever made, the exact circumstances of the books being in the room were not established. No corrective or cautionary instruction was given when the books were discovered and called to the court's attention or when the jury was charged. However, at the end of the proceedings on the day of discovery the court instructed the jury not to read newspapers or listen to news broadcasts, and added this:

> "Let me say one other thing. I hate to restrict you on your reading. However, until after this case is over, don't read anything, unless you get a letter from someone in your family. If you have to read any books or anything that might give you new and independent ideas about any of this matter, don't discuss it with each other."

As previously related, upon conclusion of the direct examination of each of several government witnesses, various of the defendants moved for production of the respective witnesses' testimony given before the grand jury. In each instance the motion was denied. Some of the witnesses had read the transcript of their respective grand jury testimony in preparation for testifying at the trial. The

ground asserted for production was defendants' claim that the testimony at trial was inconsistent within itself, inconsistent with other statements, and inconsistent with the indictment. As to some of the witnesses the trial judge made an incamera inspection, but, with no apparent reason for the distinction, declined to examine that of other government witnesses of no less importance.

Petitioner was convicted on both counts.

On appeal, the United States Court of Appeals for the Fifth Circuit reversed the conviction on substantive Count II and remanded to the District Court on conspiracy Count I with directions to conduct an evidentiary post-trial hearing, because "the defendants are entitled to a new trial unless it can be said that there is no reasonable possibility that the books affected the verdict."

The trial judge conducted an evidentiary hearing on August 7, 1972, more than two years after the verdict, during which each juror and alternate was interrogated. The responses of the jurors demonstrated that alternate juror Johnston, a dentist, brought the two prejudicial books and at least one other pamphlet into the jury room. Six of the jurors, excluding Johnston, saw at least one of the books which were lying open upon the table. At least one of the jurors saw a pamphlet relating to drugs and narcotics. One juror stated that she read a portion of one of the books and that the other jurors questioned Johnston about the narcotics mentioned in the book. Another juror recalled that there might have been a discussion about the drugs and narcotics in the books and pamphlet. Johnston himself remembered that other jurors looked at the books and that he discussed definitions of drugs with them.

On September 2, 1972, the trial court filed Findings of Fact and Conclusions of Law and concluded that there was not a reasonable possibility that the verdict was affected by the presence of the extraneous matter in the jury room.

On February 12, 1973 the United States Court of Appeals for the Fifth Circuit affirmed the Findings and Conclusions of the District Court on remand and affirmed the convictions under Count I.

ARGUMENT FOR ALLOWANCE OF WRIT

I & II

Petitioner contends that this Petition should be granted for the reason that the Court of Appeals has rendered a decision and decided a question in a way in conflict with **Marshall v. United States,** 360 U.S. 310, 79 S.Ct. 1171 (1959) which was decided by this Court, and with **United States v. Milanovich,** 303 F.2d 626 (1962) which was decided by the United States Court of Appeals for the 4th Circuit.

In the case at bar, the United States Court of Appeals, 5th Circuit (Paz v. United States, 462 F.2d 740) decided that "If admission into evidence of the cocaine brought into the country by Denise Bethancourt was error, as to the conspiracy count, it was harmless beyond a reasonable doubt."

The cocaine in question, consisting of six large kilo bags, was the only cocaine offered or received into evidence during the trial. It was received into evidence only

in support of substantive Count II of the indictment, and the conviction on that count was reversed.

After a remand on conspiracy Count I of the indictment, the Court of Appeals decided that the two books and pamphlet on narcotics which were brought into the jury room and were seen, read and discussed by the jurors, could not possibly have affected the verdict.

In **Marshall v. United States,** supra, the question before this Court in a drug case was whether exposure of some jurors to newspaper articles about the accused was so prejudicial as to warrant exercise of the Supreme Court's supervisory power to order a new trial by granting a Petition for Certiorari. The Supreme Court decided the question in the affirmative, and said:

> "The trial judge on learning that these news accounts had reached the jurors summoned them into his chamber one by one and inquired if they had seen the articles. Three had read the first of the two we have listed above and one had read both. Three others had scanned the first article and one of those had also seen the second. Each of the seven told the trial judge that he would not be influenced by the news articles, that he could decide the case only on the evidence of record, and that he felt no prejudice against petitioner as a result of the articles. The trial judge, stating he felt there was no prejudice to petitioner, denied the motion for mistrial.
>
> The trial judge has a large discretion in ruling on the issue of prejudice resulting from the

reading by jurors of news articles concerning the trial. Holt v. United States, 218 U.S. 245, 251, 31 S.Ct. 2, 6, 54 L.Ed 1021. Generalizations beyond that statement are not profitable, because each case must turn on its special facts. We have here the exposure of jurors to information of a character which the trial judge ruled was so prejudicial it could not be directly offered as evidence. The prejudice to the defendant is almost certain to be as great when that evidence reaches the jury through news accounts as when it is a part of the prosecution's evidence Cf. Michelson v. United States, 335 U.S. 469, 475, 69 S.Ct. 213, 218, 93 L.Ed. 168. It may indeed be greater for it is then not tempered by protective procedures.

In the exercise of our supervisory power to formulate and apply proper standards for enforcement of the criminal law in the federal courts (Bruno v. United States, 308 U.S. 287, 60 S.Ct. 198, 84 L.Ed. 257; McNabb v. United States, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819) we think a new trial should be granted."

In **United States v. Milanovich**, supra, also an alleged prejudicial publicity case, the 4th Circuit Court of Appeals said:

"When discovery of such events is made after the jury is sworn, then a new trial is mandatory unless the Government can affirmatively show that the jurors could not have been affected by it. See Marshall v United States, 360 U.S. 310,

> 79 S.Ct. 1171, 3 L.Ed. 2d 1250 (1959); Shepherd v. Florida, 341 U.S. 50, 71 S.Ct. 549, 95 L.Ed. 740 (1951) (concurring opinion). In the latter instance the burden is not upon the defendant to establish that he was prejudiced thereby."

In the case at bar, the Government never met its affirmative burden to demonstrate that the erroneously admitted six dirty bags of cocaine could not have affected the verdict of the jury. Indeed, such demonstrative evidence, standing alone, denied Petitioner a "fair determination of his guilt or innocence free from bias, passion or prejudice." **Braswell v. United States,** 200 F.2d 597, 602 (5th Circuit 1952). See also **Little v. United States,** 73 F.2d 861 (10th Cir. 1934)

Even more prejudicial to Petitioner was the presence in the jury room of the two books and a pamphlet supplying opinions and histories of drug and narcotic importation and addiction from authors who obviously would not have been permitted to testify at the trial.

After remand for an evidentiary hearing on this latter matter, the Court of Appeals decided "that there is no reasonable possibility that the books * * * affected the verdict." Nevertheless, at the remand hearing it was determined that at least one juror read portions of the books and others discussed the contents. The trial court instructed the jury:

> "Let me say one other thing. I hate to restrict you on your reading. However, until after this case is over, don't read anything, unless you get a letter from someone in your family. If you

> have to read any books or anything that might give you new and independent ideas about any of this matter, don't discuss it with each other."

The Court of Appeals found this instruction:

> "Rather than being an instruction not to read extrinsic matter concerning the subject matter of the trial, this was subject to the interpretation that such reading was permissible so long as not discussed with other persons."

Eighty years ago the Supreme Court held it to be reversible error when the trial judge allowed an entire book to go into the jury room without sealing off the pages not admitted into evidence even though it was not shown that any of the jurors had actually read the inadmissible pages. **Bates v. Preble,** 151 U.S. 149, 14 S.Ct. 277 (1893).

It has been established that on inquiry jurors very frequently consciously or unconsciously do not express honestly their reaction to offensive material which they may have seen. See A.B.A. Standards Relating to Fair Trial and Free Press, 56-57 (Approved Draft, General Commentary, 1968). Furthermore, it is not without significance that cases in recent years in this field, **Irvin v. Dowd,** 366 U.S. 717 **Rideau v. Louisiana,** 373 U.S. 723, **Sheppard v. Maxwell,** 384 U.S. 333, have been departing from the view "that the discretion of the trial judge with regard to these questions is extremely broad and that actual prejudice, not simply the likelihood of harm, must be shown in order to obtain relief." A.B.A. Standards Relating to Fair Trial and Free Press, supra, 113.

Our courts have traditionally upheld the position that verdicts should be set aside where it is shown that the impartiality of jurors may have been affected or where tainted material has come before the jury. It is impossible to ascertain the effect material in the jury room had upon the minds of the jurors in reaching their verdict. It is just this situation which demands reversal. An analysis of prior cases pertaining to incidents where out-of-court evidence reached the jurors convinces us that Petitioner in the present case was prejudicially denied his right to a fair trial.

III.

Petitioner also contends that this Petition should be granted for the reason that the Court of Appeals has rendered a decision and decided a federal question in a way in conflict with **Dennis v. United States**, 384 U.S. 855, 86 S.Ct. 1840 (1966) which was decided by this Court; **Niro v. United States**, 388 F.2d 535 (1968) which was decided by the First Circuit Court of Appeals; **United States v. Youngblood**, 379 F.2d 365 (1967) which was decided by the Second Circuit Court of Appeals; **United States v. Amabile**, 395 F.2d 47 (1968), vacated on other grounds 394 U.S. 310, 89 S.Ct. 1164, which was decided by the Seventh Circuit Court of Appeals; and **Melton v. United States**, 398 F.2d 321 (1968) which was decided by the Tenth Circuit Court of Appeals.

The Court of Appeals in **Paz v. United States**, 462 F.2d 740, the instant case, decided the question of the production of the grand jury testimony of government witnesses as follows:

"Since **Dennis v. U.S.**, 384 U.S. 855, 16 L.Ed.2d 973 (1966), this circuit has continued to adhere to the rule that the defendant must make a showing of particularized need to be entitled to inspect grand jury minutes. (citations omitted) Our position is contrary to the rule established in some other circuits which dispense with a required showing of a particularized need. (citations omitted) Unlike several courts (citations omitted) we have not read Dennis as equating an asserted need for grand jury minutes in order to impeach a government witness with the particularized need required for inspection. * * * So that the grand jury's realm will be invaded no more than necessary we have approved as the initial step in response to motions for inspection an in camera inspection conducted by the district judge to discover any such inconsistencies."

The trial judge had denied Petitioner access to all minutes of grand jury testimony of government witnesses. As to some of the witnesses, the Court made an in camera inspection, but, with no apparent reason for the distinction, declined even to examine that of other government witnesses of no less importance. Nevertheless, the Court of Appeals affirmed.

This Court, in deciding **Dennis v. United States**, supra, on June 20, 1966, said:

"A conspiracy case carries with it the inevitable risk of wrongful attribution of responsibility to one or more of the multiple defendants. See e.g.

United States v. Bufalino, 285 F.2d 408, 417-418 (C.A. 3d Cir. 1960). Under these circumstances, it is especially important that the defense, the judge and the jury should have the assurance that the *doors that may lead to truth have been unlocked.* In our adversary system for determining guilt or innocence, it is rarely justifiable for the prosecution to have exclusive access to a storehouse of relevant fact. Exceptions to this are justifiable only by the clearest and most compelling considerations. For this reason, we cannot accept the view of the Court of Appeals that it is 'safe to assume' no inconsistencies would have come to light if the grand jury testimony had been examined. *There is no justification for relying upon 'assumption.'*

Trial judges ought not to be burdened with the task or the responsibility of examining sometime voluminous grand jury testimony in order to ascertain inconsistencies with trial testimony. In any event, 'it will be extremely difficult for even the most able and experienced trial judge under the pressures of conducting a trial to pick out all of the grand jury testimony that would be useful in impeaching a witness.' Pittsburgh Plate Glass, 360 U.S., at 410, 79 S.Ct., at 1246 (dissenting opinion). Nor is it realistic to assume that the trial court's judgment as to the utility of material for impeachment or other legitimate purposes, however conscientiously made, would exhaust the possibilities. In our adversary system, it is enough for judges to judge. *The determination of what may be useful to the defense can*

properly and effectively be made only by an advocate. The trial judge's function in this respect is limited to deciding whether a case has been made for production, and to supervise the process: for example, to cause the elimination of extraneous matter and to rule upon applications by the Government for protective orders in unusual situations, such as those involving the Nation's security or clearcut dangers to individuals who are identified by the testimony produced.

Because petitioners were entitled to examine the grand jury minutes relating to trial testimony of the four government witnesses, and to do so while those witnesses were available for cross-examination, we reverse the judgment below and remand for a new trial. It is so ordered." (Emphasis supplied)

Various circuits have interpreted *Dennis* in different ways, but most now agree either that particularized need no longer is required, or that the use of grand jury testimony to impeach, refresh the recollection, or test the credibility of a witness, makes out a case of "particularized need."

In **Niro v. United States**, supra, the First Circuit held a denial of the requested minutes not to be prejudicial error only because the testimony of the witness in question was of no substantial materiality; but the Court said:

"In our opinion the only error committed at the trial was the refusal to permit defendants access

> to Ford's grand jury testimony for the purpose of cross-examination. This refusal was not in accord with our view of Dennis v. United States, 1966, 384 U.S. 855, 86 S.Ct. 1840, 16 L.Ed.2d 973, as we held, subsequent to the instant trial, in Schlinsky v. United States, 1 Cir. 1967, 379 F.2d 735, cert. denied, 389 U.S. 920, 88 S.Ct. 236, 19 L.Ed. 265."

The Second Circuit took the following position in **United States v. Youngblood,** supra:

> "For the foregoing reasons we direct that at trials commencing after our judgment here is entered, the district courts of this circuit at the request of the defendant should order that the defendant be allowed to examine the grand jury testimony of those witnesses who testify at his trial *without requiring him to show any particularized need for this material;* we are holding that a defendant should be entitled to see all the grand jury testimony of each witness on the subjects about which that witness testified at the defendant's trial." (Emphasis supplied)

The seventh circuit in **United States vs. Amabile,** supra, specifically adopted and approved the **Youngblood** procedure.

The tenth circuit ruled that the grounds utilized in the case at bar do in fact constitute "particularized need" in **Melton vs. United States,** supra:

"In Cargill vs. United States, 10 Cir. 381 F.2d 849, 851, cert. denied 389 U.S. 1041, 88 S.Ct. 781, 19 L.Ed.2d 831, we recognized that a particularized need of the defense for grand jury testimony must be shown before the defense is entitled to the testimony and we interpreted Dennis v. United States, 384 U.S. 855, 86 S.Ct. 1840, 16 L.Ed.2d 973, as holding that '*such need is shown when the defense states that it wishes to use the transcript for the purpose of impeaching a witness, to refresh his recollection, or to test his credibility.*' In support of the motion for inspection, defense counsel said that the grand jury transcript 'will give us an opportunity to establish an inconsistency.' Although the precise language of Cargill is not followed, the purpose of showing an inconsistency is to impeach or test credibility. We believe that the Cargill particularized need test is satisfied." (Emphasis supplied)

In the case at bar, some of the government witnesses had read a transcript of their respective grand jury testimony in preparation for testifying at trial. As to these witnesses and others their testimony at the trial was inconsistent within itself, inconsistent with other statements, and inconsistent with the indictment. Petitioner particularly sought the minutes to impeach them and to test credibility. Fair play seems to dictate that an accused be allowed use of the grand jury minutes for impeachment, particularly when the accused seeks only the testimony pertaining to the subjects testified to at trial.

CONCLUSION

For the foregoing reasons, it is submitted that this Petition for Writ of Certiorari should be granted.

Dated at Miami Beach, Florida this ____ day of April, 1973.

Respectfully submitted,

LAWRENCE E. HOFFMAN
Attorney for Petitioner
407 Lincoln Road, Suite 12-D
Miami Beach, Florida 33139

By_____
LAWRENCE E. HOFFMAN

HOFFMAN & ST. JEAN
Of Counsel

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true copy of the foregoing Petition for Writ of Certiorari was mailed this ___ day of April, 1973 to Hon. Robert Rust, U.S. Attorney, P. O. BOX 1070, Miami, Florida 33101; Gino Negretti, Esq., 3061 N.W. 7th Street, Miami, Florida; James E. Siff Esq., 401 Broadway, New York N. Y.; William A. Daniel, Esq., 408 Concord Building, Miami, Florida; Max Kogen, Esq., City National Bank Building, Miami, Florida; and Angelo Ali, Esq., 28 West Flagler Street, Miami, Florida.

LAWRENCE E. HOFFMAN